

BARCELISA VECINO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND FELISA VECINO, RESPONDENTS.

G.R. No. L-38612. March 29, 1977

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ca37cdfefb33/>

BARREDO, J.:

Petition for review of the resolution of the Court of Appeals dated January 29, 1974 in CA-G.R. No. 52726-R, Felisa Vecino vs. Barcelisa Vecino and of the resolution also in the same case of April 3, 1974 denying reconsideration of the former.

In Land Registration Case No. N-5475, LRC No. 28981, Felisa Vecino, herein private respondent, applied for the registration of a parcel of land. Petitioner, a sister of Felisa and who claims to be co-owner of the land applied for by inheritance from their common parents, appeared in the case only after a decision in favor of Felisa had already been rendered, by filing a petition for review. After due hearing, this petition was dismissed. Petitioner appealed.

After petitioner's record on appeal had reached the Court of Appeals, Felisa filed with said court a motion to dismiss the appeal on two (2) grounds, namely: (a) that said appeal was made out of time and (b) that the Record on Appeal does not contain such data as will show that said appeal was made on time. After receiving the opposition to said motion filed by petitioner, the Court of Appeals dismissed the appeal thru its resolution afore-mentioned of January 29, 1974 reading thus:

"This will dispose of motion to dismiss appeal on p. 79 of rollo, which has been opposed by appellant on p. 95 of rollo. The antecedents are not very complicated.

Appellee filed this case for land registration in lower court, CFI-Rizal; she got decision on 19 June, 1967, p. 10 of Record on Appeal. On 22 July, 1967, appellant herein filed petition for review, p. 11 of Record on Appeal; it was opposed by appellee, and after hearing, denied by order of 6 July, 1972, p. 49 of Record on Appeal; it is here where complications set in; because

On 16 August, 1972, appellant moved for 10 days "from today" to file motion for reconsideration, p. 50 of Record on Appeal, alleging that counsel got xerox copy of denial order only on 11 August, 1972 from son of appellant who had gotten it from lower court on same day, p. 50 of Record on Appeal; this motion for extension was granted, p. 53 of Record on Appeal, and appellant thereupon filed motion for reconsideration on 25 August, 1972, p. 53 of Record on Appeal and it was denied on 2 September, 1972 and copy thereof received by appellant's counsel on 14 September, 1972, p. 71 of Record on Appeal; there-upon, she filed notice of appeal and appeal bond on 15 September, 1972 p. 72 and Record on Appeal on 3 October, 1972, p. 72 of Record on Appeal, it is this setting that prompted appellee to move trial Court to disapprove Record on Appeal, principally on ground that it had been filed too late, judgment had already become final, p. 73 of Record on Appeal, and first trial Judge dismissed appeal on 14 October, 1972, p. 91 of Record on Appeal, but upon motion for reconsideration by appellant, second Judge (Executive Judge) granted reconsideration and approved appeal, p. 133 of Record on Appeal, and appellee moved for reconsideration while appellant moved to amend

her Record on Appeal to clarify certain dates, - and once again, Executive Judge granted appellant's petition and overruled appellee's opposition and prayer to dismiss appeal, - so that the question now presented in present motion to dismiss appeal, - which is a reiteration of said incident in lower court, is whether or not appeal had been timely perfected, - this is the principal question to which this Court of Appeals will direct its attention.

Considering: That appellant does not apparently debate the point that copy of order denying petition for review was posted by registered mail to his counsel on July 13, 1972 but returned unclaimed, with the envelop stamped that 2nd notice for the said mail matter was delivered to counsel for petitioner-appellant on July 25, 1972, p. 88 of Record on Appeal - it is easy to see that applying the Rules, Rule 13, Sec. 5 in relation to Sec. 8, - counsel must be deemed to have been served copy of said denial order as of 30 July 1972 in the least, since under the Rules, if addressee,

'fails to claim his mail from the post office within 5 days from the date of first notice by the postmaster, service shall take effect at the expiration of such time.'

if that be the case, then it is also easy to see that last day to perfect appeal should have been 29 August, 1972, but since on 25 August, 1972, appellant filed motion for reconsideration; that motion was filed on time, but neither should it be over-looked that in the least, appellant had already consumed 26 days of the period to appeal, for even if he had filed motion to extend time to file motion for reconsideration, that motion became pointless when after all, he filed within period to appeal. This Court neither can on the other hand, count the 30-day to appeal from,

'August 11, 1972 when allegedly petitioner--oppositor learn for the first instance of the existence of the said order (denying petition for relief) and obtained the 'xerox copy' of the same for her counsel,' p. 143 of Record on Appeal.'

because the counting of the period to appeal is not from the date a party comes to know of the existence of order sought to be appealed but from the day he is legally deemed notified thereof;

Considering: Now, that appellant received order denying reconsideration on 14 Sept. '72 and filed notice of appeal and appeal bond on 15 September, 1972 and Record on Appeal on 3 October, 1972, therefore, from date of notice thereof up to date of filing of Record on Appeal, she consumed another 19 days, which added to the original 26 days would bring to a total of 45 days the period she consumed in perfecting her appeal, - that was too late; the dismissal of her appeal by the first Judge who had issued denial order to petition for relief was correct, and reconsideration by Executive Judge was not; and any attempt by appellant to still ask to be permitted to amend her Record on Appeal by clarifying certain dates, p. 133 of Record on Appeal, - which was again permitted by the Executive Judge, p. 141 of Record on Appeal, was also wrong; the result must be to grant the move to dismiss this appeal, reiterated in this Court of Appeals.

IN VIEW WHEREOF, this Court is constrained to dismiss, as it now dismisses, the appeal." (Pages 35-37, Record.)

Petitioner's motion for reconsideration was denied on April 3, 1974 thru the following resolution:

"After hearing counsel and examining original expediente brought to hearing by representative of Clerk of Lower Court, this Court is convinced:

1st - That copy of order of 6 July, 1972 sought to be appeal from, was sent by registered mail to Attorney for appellant, but was returned unclaimed, and that the words 'Second Notice' really appear rubber stamped upon envelope in between the dates '7-25' and '8-8'; following Rule 11, Sec. 5 and 8, he was deemed served at least as of 30 July, 1972, since he filed motion for reconsideration on 25 August, 1972 and was notified of denial on 14 September, 1972 but filed Record on Appeal only on 3 October, 1972, therefore appeal was too late;

"2nd - Even disregarding foregoing, and following appellant's own computation on page 9 of his motion for reconsideration, page 113, rollo, that he actually received copy of decision on 11 August, 1972, filed motion for reconsideration on 25 August, 1972, was notified of denial thereof on 14 September, 1972, and filed Record on Appeal on 3 October, 1972 - this means that he had also consumed 33 days which is also too late.

In view whereof, this Court is constrained to deny, as it now denies, reconsideration." (Page 74, Record.)

The problem resolved by respondent court appears to have arisen from the following facts:

1. The order of the trial court denying petitioner's petition for review of the land registration decision in favor of Felisa, which was dated July 6, 1972, was attempted to be served on the former by registered mail. It has been shown that the envelope containing said order duly addressed to her counsel of record was returned un-claimed. It is pretended that the annotations reading '7-25' and '8-8' appearing on the face of the returned envelope together with the stamp "Return to Sender-Unclaimed" indicate that two notices were sent, on the dates thus noted, which are supposed to correspond to July 25 and August 8 (presumably 1972), to petitioner's counsel but he must have ignored them.
2. On August 11, 1972, a son of petitioner secured a "xerox" copy of the above order of July 6, 1972 from the court.
3. On August 16, 1972, petitioner's counsel filed a motion for an extension of ten (10) days of the period within which to file a motion for reconsideration.
4. This motion was granted on August 19, 1972 and copy of the favorable order was served on counsel on August 24, 1972.
5. On August 25, 1972, counsel filed petitioner's motion for reconsideration.
6. This motion was denied on September 2, 1972 and copy of the order of denial was served on counsel on September 14, 1972.
7. On September 15, 1972, a notice of appeal as well as the corresponding appeal bond were filed.
8. The record on appeal was filed on October 3, 1972.

Considering these facts, We are of the view that the Court of Appeals was rather overly strict in dismissing petitioner's appeal.

Relative to the supposed service of the disputed order of July 6, 1972 to the counsel of petitioner by registered mail, it is to be noted that there is actually no presumption of regularity that can arise from the meager facts relied upon by the Court of Appeals. The provision of Section 8 of Rule 13 regarding completeness of service by registered mail emphasizes that such complete-ness takes place ordinarily upon actual receipt by the addressee. Thus, in applying the proviso for cases in which the addressee "fails to claim his mail from the post office within five (5) days from the date of the first notice of the postmaster", it is but proper that there must be clear proof of compliance with the postal regulations governing the sending and receipt of the notice referred to in the rule. In *Hernandez vs. Navarro*, 48 SCRA 44, the Court discussed at length the implications of the kind of service by registered mail herein involved and We held:

"Clearly then, proof should always be available to the post office not only of whether or not the notices of registered mail have been reported delivered by the letter carrier but also of how or to whom and when such delivery has been made. Consequently, it cannot be too much to expect that when the post office makes a certification regarding delivery of registered mail, such certification should include the data not only as to whether or not the corresponding notices were issued or sent but also as to how, when and to whom the

delivery thereof was made. Accordingly, the certification in the case at bar that the first and second notices addressed to Atty. Narvasa had been 'issued' can hardly suffice to satisfy requirements of equity and justice. It was incumbent upon the post office to further certify that said notices were reportedly received. When there are several related acts supposed to be performed by a public officer or employee in regard to a particular matter, the presumption of regularity in the performance of official functions would not arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them have been performed is available under the law or office regulations to the officer making the certification. In other words, the omission of some of the acts in the certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed. Of course, where the certification is worded in general terms that reasonably comprehend performance of all the related acts, the presumption of regularity holds as to all of them. We hold, therefore, that there being no showing that the first and second notices were received by Atty. Narvasa, the service of the order of probate in question upon him must be deemed to have been made on July 24, 1967, the date he actually received the same."

In the instant case, there is no showing at all of how the notice of the registered mail containing the order in question was sent and received. In the Hernandez case, *supra*, there was even a certification that the Postmaster had actually issued the notices addressed to counsel; here, there is not even such a certification. The meager annotations appearing on the envelope aforementioned cannot obviously serve the purpose just indicated. For this reason, We are left with no alternative except to hold that the attempted service by registered mail relied upon by the Court of Appeals and private respondent did not in legal contemplation materialize.

Accordingly, the best that can be done here is to find out what legal significance can be given to the fact adverted to earlier that the son of petitioner secured from the court a "xerox" copy of the order sought to be appealed on August 11, 1972. It is more or less conceded that said copy was delivered to counsel on the same date and it was evidently as a matter of precaution that a motion for extension of time to file the above-mentioned motion for recon-sideration was filed by counsel on August 16, 1972. In any event, that promised motion was actually filed on August 25, 1972. And because the motion was denied on September 2, 1972 and the order of denial was served on counsel on September 14, 1972, the question that arises is, up to when was petitioner supposed to file her record on appeal, the notice of appeal and appeal bond having been filed already on September 15, 1972.

On this score, it is the rule that service upon any person other than the counsel of record, even actually upon the party in interest himself, is not legally effective and may not serve to start the corresponding reglementary period for the subsequent procedural steps he is supposed to take. In the case of Chainani vs. Tansinco, 90 Phil. 862, Chainani himself, instead of his counsel, secured and signed for the copy of the decision. This Court held that the period for appeal was nevertheless to be counted from the date counsel was served therewith. To quote from the decision:

"Accordingly, as the petitioner was represented by Atty. Barrera, the receipt by the petitioner on September 18, 1950, of a copy of the decision cannot be considered a valid notice, since it is not pretended that service on the petitioner himself was ordered by the lower court. It is immaterial or unimportant that the petitioner volunteered to get the copy, because the purpose of section 2 of Rule 27 is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's case.

The contention of respondent Tomas de Vera that Atty. Barredo was not authorized to receive a copy of the decision on behalf of petitioner's attorney of record J. G. Barrera, cannot alter the conclusion that the motion for new trial filed for the petitioner on November 17, 1950, was within the 30-day reglementary period. Assuming that Atty. Barredo could not receive service of notice, the motion for new trial was filed even before the reglementary period had begun to run. There can be no question about the authority of Atty. Barredo to file the motion for new trial, especially in view of the motion of Atty. Barrera of February 6, 1951, making of

record the appearance of Atty. Barredo, praying for favor-able action on the latter's motion for new trial, and seeking the denial of the motion for execution filed by respondent Tomas de Vera."

It cannot be otherwise in the case at bar. But here, counsel was never served in any of the modes provided in the rules. He got his copy from petitioner's son, which cannot be deemed as legal service, there being no official record thereof. It results, therefore, that under the peculiar circumstances of this case, the earliest date that can be considered as the date of service of the order in dispute to counsel would be August 16, 1972, the date he filed his motion for extension of time to file a motion for reconsideration, which should be deemed to be his formal indisputable acknowledgment of the date he came to know of said order. In this manner, there would be uniformity in the rule and the courts would not have to depend on possibly conflicting evidence as to when actually service has been factually made to counsel, not taking into account anymore the instances when attempts to prove the most favorable date, even without real factual basis, may be made.

Accordingly again, and considering that from August 16 to August 25, when counsel filed his motion for reconsideration only nine (9) days had elapsed, it should follow that he still had twenty-one (21) days from service of the denial order to make his appeal. This service took place on September 14, 1972 and 21 days from that date is October 5, 1972. And since the record on appeal of petitioner was filed on October 3, 1972, there can be no question that petitioner's appeal was made on time.

IN VIEW OF ALL THE FOREGOING, the resolutions of the Court of Appeals mentioned at the outset, of January 29, 1974 and April 3, 1974, are hereby reversed, and the respondent court is hereby ordered to give due course to petitioner Barcelisa Vecino's appeal in CA-G.R. No. 52726-R. Costs against respondent Felisa Vecino.

Fernando, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.